

No. 15182

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United States  
Court of Appeals  
for the Ninth Circuit

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CONNECTICUT FIRE INSURANCE COMPANY,

Appellant,

vs.

AGNES H. REMILLARD, Administratrix of the Estate of  
Edward S. Remillard, Deceased,

Appellant.

AGNES H. REMILLARD, Administratrix of the Estate of  
Edward S. Remillard, Deceased,

Appellant,

vs.

CONNECTICUT FIRE INSURANCE COMPANY, and  
NORTHWEST CASUALTY CO.,

Appellees.

NORTHWEST CASUALTY CO.,

Appellant,

vs.

AGNES H. REMILLARD, Administratrix of the Estate of  
Edward S. Remillard, Deceased,

Appellee.

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Transcript of Record

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Appeals from the United States District Court for the  
District of Oregon

FILED

OCT 29 1956



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Appeals from the United States District Court for the  
District of Oregon



## INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

|   | PAGE |
|---|------|
| Agreed Statement of Facts.....  | 16   |
| Ex. A—Insurance Policy No. ACC 10763.   | 21   |
| B—Certificate of Insurance.....   | 30   |
| C—Standard Automobile Policy,<br>Northwest Casualty Co.....                                       | 32   |
| D—Certificate of Insurance.....   | 33   |
| Allegations of Plaintiff.....   | 3    |
| Ex. A—Endorsement Approved by the<br>Public Utilities Commissioner of<br>Oregon, Form MP-944..... | 5    |
| Allegations of Plaintiff, Supplemental.....   | 9    |
| Answer of Connecticut Fire Insurance Co. to<br>Allegations .....                                  | 6    |
| Answer of Northwest Casualty Co. to Allega-<br>tions .....  | 7    |
| Answer of Connecticut Fire Insurance Co. to<br>Supplemental Allegations .....                     | 14   |
| Answer of Northwest Casualty Co. to Supple-<br>mental Allegations .....                           | 12   |

|   | INDEX | PAGE       |
|---|-------|------------|
| Appeal:   |       |            |
| Certificate of Clerk to Record on.....  |       | 73         |
| Designation of Record on.....   |       | 80         |
| Notice of .....   |       | 58, 59     |
| Statement of Points on (USDC).....  |       | 59, 61     |
| Statement of Points on (USCA).....  |       | 76, 77, 78 |
| Attorneys, Names and Addresses of.....  |       | 1          |
| Certificate of Clerk.....   |       | 73         |
| Deposition of Charles Cox.....  |       | 64         |
| Designation of Record on Appeal, Agnes H.<br>Remillard .....  |       | 80         |
| Findings of Fact and Conclusions of Law.....  |       | 49         |
| Judgment .....  |       | 57         |
| Notice of Appeal, Connecticut Fire Insurance<br>Co. ....  |       | 58         |
| Notice of Appeal, Northwest Casualty Co.....  |       | 59         |
| Notice of Appeal, Agnes H. Remillard.....   |       | 58         |
| Objections of Connecticut Fire Insurance Co.<br>to Proposed Findings of Fact and Conclu-<br>sions of Law..... |       | 35         |

| INDEX   | PAGE |
|---|------|
| Objections of Northwest Casualty Co. to Proposed Findings of Fact and Conclusions of Law .....          | 42   |
| Proposed Additional and Amended Findings of Fact, etc., of Connecticut Fire Insurance Co.               | 38   |
| Proposed Additional and Amended Findings of Fact and Conclusions of Law of Northwest Casualty Co. ....  | 45   |
| Reply to Answers of Connecticut Fire Insurance Co. ....   | 15   |
| Reply to Answers of Northwest Casualty Co...  | 15   |
| Statement of Points on Which Connecticut Fire Insurance Co. Intends to Rely (USDC)....                  | 59   |
| Statement of Points of Northwest Casualty Co. (USDC) .....  | 61   |
| Statement of Points on Appeal, Agnes H. Remillard (USCA) .....  | 78   |
| Statement of Points and Designation of Record, Adoption of, Connecticut Fire Insurance Co. (USCA) ..... | 76   |
| Statement of Points and Designation of Record, Northwest Casualty Co. (USCA).....                       | 77   |









## NAMES AND ADDRESSES OF ATTORNEYS

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Portland, Oregon,

For Connecticut Fire Insurance Company.

PHILLIPS & SANDEBERG;

WILLIAM C. RALSTON,

909 Public Service Building,

Portland, Oregon,

For Northwest Casualty Company.



[Title of District Court and Cause.]

Civil No. 7891

## ALLEGATIONS OF PLAINTIFF

Comes now the plaintiff and alleges:

### I.

That the above-entitled action was commenced by the plaintiff to recover damages sustained by the estate of plaintiff's intestate as a result of said intestate's wrongful death which occurred as a result of an automobile accident; that the trial of the above-entitled action has culminated in a judgment in favor of plaintiff and against defendants, and each of them, in the sum of \$10,000.00 plus costs and disbursements taxed at \$189.70, which judgment was made and entered in the above court on June 7, 1955; that no part of said judgment has been paid.

### II.

That on December 6, 1954, the above-named defendant Charles Cox also known as Charlie Cox, was the named insured in a policy of bodily injury liability and property damage liability insurance which had been issued by garnishee Connecticut Fire Insurance Company, said policy being more particularly described as policy No. ACC10763.

### III.

That on December 6, 1954, the above-named defendant Charles Cox, also known as Charlie Cox, was the named insured in a policy of bodily injury liability and property damage liability insurance

which had been issued by garnishee Northwest Casualty Co., said policy being more particularly described as policy No. 9063892.

#### IV.

That attached to and forming a part of both of said insurance policies was an endorsement approved by the Public Utilities Commissioner of Oregon, Form MP-944, and said endorsements were in full force and effect on December 6, 1954; that a copy of said Form MP-944 is attached hereto marked "Exhibit A" and by this reference made a part hereof as if fully set forth herein.

#### V.

That the motor vehicles which were in the aforesaid accident of December 6, 1954, which were owned by defendant Charles Cox and being operated by his employee, defendant Albert Earl Jones, were included within the coverage afforded by said policies of insurance and the endorsements thereto, and in accordance with the terms thereof the garnishees Connecticut Fire Insurance Company and Northwest Casualty Co., and each of them, were obligated to pay the judgment heretofore entered in favor of plaintiff and against the defendants for damages sustained by reason of the wrongful death of plaintiff's intestate.

#### VI.

That a writ of execution has heretofore been issued by the Clerk of the above-entitled court and that in response to a notice of garnishment directed

to them the garnishees Connecticut Fire Insurance Company and Northwest Casualty Co. have filed herein their certified answers thereto, which in substance set forth that neither of them has any money or other property of any nature owing to the above-named defendants, or either of them; that said certificates of the garnishees in their present form are unsatisfactory to the plaintiff.

## VII.

That the plaintiff has served the foregoing allegations upon said garnishees together with written interrogatories.

Wherefore plaintiff demands judgment against the garnishee, Connecticut Fire Insurance Company and Northwest Casualty Co., and each of them, for the sum of \$10,189.70, together with interest thereon at the rate of six per cent (6%) per annum from June 7, 1955.

/s/ FRANK McK. BOSCH,  
Of Attorneys for Plaintiff.

## EXHIBIT A

[Exhibit A attached to the foregoing is identical to the endorsement set out in full as part of Exhibit A attached to the Agreed Statement of Facts. See page 23 of this printed record.]

Service of copy acknowledged.

[Endorsed]: Filed December 12, 1955.

[Title of District Court and Cause.]

ANSWER OF GARNISHEE, CONNECTICUT  
FIRE INSURANCE COMPANY, TO ALLE-  
GATIONS OF PLAINTIFF

Comes now, Connecticut Fire Insurance Com-  
pany, garnishee, and for answer to the allegations  
of plaintiff on file herein, denies each and every al-  
legation and the whole thereof except that this gar-  
nishee admits Paragraphs I, II, III, IV, VI and  
VII thereof.

For Further, Separate and Affirmative Answer to  
the Allegations of Plaintiff This Garnishee  
Alleges:

I.

Under the terms of said policy issued by this gar-  
nishee to said Charlie Cox, coverage was expressly  
excluded when either the 1948 Autocar tractor de-  
scribed in said policy, or the 1952 Homemade semi-  
trailer described therein was operated as a part  
of a truck and trailer unit or as a part of a tractor  
and trailer unit, the other portion of which was not  
insured by this defendant.

II.

At the time of the accident referred to in Para-  
graph I of plaintiff's allegations, said 1952 Home-  
made trailer was being operated while attached to  
a certain 1948 Peterbuilt tractor which was then  
and there owned by said Charlie Cox and which  
was and is not insured by this defendant.



III.

At the time and place of said accident, said equipment was not being operated pursuant to a license or permit of the Public Utilities Commissioner of Oregon in that said vehicle was being driven to Portland, Oregon, for the sole purpose of having repairs made upon the said Peterbuilt tractor and for no other purpose. The endorsement referred to in Paragraph IV of plaintiff's allegations was not and is not, therefore, applicable to said accident nor the judgment referred to in Paragraph I of plaintiff's allegations.

Wherefore, garnishee, Connecticut Fire Insurance Company, prays that plaintiff take nothing and that plaintiff's allegations be dismissed.

/s/ W. H. MORRISON,

/s/ HOWARD K. BEEBE.

Service of copy acknowledged.

[Endorsed]: Filed December 14, 1955.

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[Title of District Court and Cause.]

ANSWER OF GARNISHEE NORTHWEST  
CASUALTY COMPANY

Comes now the Northwest Casualty Company, garnishee, and for answer to the allegations of the plaintiff, admits, denies and alleges as follows:

I.

Admits the allegations of Paragraphs I, VI and VII.

## II.

The garnishee has no information sufficient to form a belief and therefore denies the allegations of Paragraph II.

## III.

Denies the allegations of Paragraphs III and V.

## IV.

Admits the allegations of Paragraph IV except that the copy of Form MP-944 attached as a substantial copy.

Wherefore, having fully answered, the garnishee Northwest Casualty Company prays for a judgment dismissing the allegations as to it and for its costs and disbursements.

/s/ WM. C. RALSTON,  
Of Attorneys for  
Northwest Casualty Co.

Service of copy acknowledged.

[Endorsed]: Filed December 16, 1955.

In the District Court of the United States for the  
District of Oregon

Civil No. 7891

AGNES H. REMILLARD, Administratrix of the  
Estate of Edward S. Remillard, Deceased,

Plaintiff,

vs.

CHARLES COX and ALBERT EARL JONES,

Defendants,

CONNECTICUT FIRE INSURANCE COM-  
PANY,

Garnishee,

NORTHWEST CASUALTY CO.,

Garnishee.

### SUPPLEMENTAL ALLEGATIONS OF PLAINTIFF

Comes now the plaintiff, leave of court having  
been first obtained, and files herewith supplemental  
allegations, to wit:

#### I.

That the above-entitled action was commenced by  
the plaintiff to recover damages sustained by the  
estate of plaintiff's intestate as a result of said in-  
testate's wrongful death which occurred as a result  
of an automobile accident; that the trial of the  
above-entitled action has culminated in a judgment  
in favor of plaintiff and against defendants, and

each of them, in the sum of \$10,238.00 plus costs and disbursements taxed at \$189.70, which judgment was made and entered in the above court on June 7, 1955; that no part of said judgment has been paid.

## II.

That on December 6, 1954, the above-named defendant Charles Cox, also known as Charlie Cox, was the named insured in a policy of bodily injury liability and property damage liability insurance which had been issued by garnishee Connecticut Fire Insurance Company, said policy being more particularly described as policy No. ACC10763.

## III.

That on December 6, 1954, the above-named defendant Charles Cox, also known as Charlie Cox, was the named insured in a policy of bodily injury liability and property damage liability insurance which had been issued by garnishee Northwest Casualty Co., said policy being more particularly described as policy No. 9063892.

## IV.

That attached to and forming a part of both of said insurance policies was an endorsement approved by the Public Utilities Commissioner of Oregon, Form MP-944, and said endorsements were in full force and effect on December 6, 1954; that a copy of said Form MP-944 is attached hereto marked "Exhibit A" and by this reference made a part hereof as if fully set forth herein.

## V.

That the motor vehicles which were in the aforesaid accident of December 6, 1954, which were owned by defendant Charles Cox and being operated by his employee, defendant Albert Earl Jones, were included within the coverage afforded by said policies of insurance and the endorsements thereto, and in accordance with the terms thereof the garnishees Connecticut Fire Insurance Company and Northwest Casualty Co., and each of them, were obligated to pay the judgment heretofore entered in favor of plaintiff and against the defendants for damages sustained by reason of the wrongful death of plaintiff's intestate.

## VI.

That a writ of execution has heretofore been issued by the clerk of the above-entitled court and that in response to a notice of garnishment directed to them the garnishees Connecticut Fire Insurance Company and Northwest Casualty Co., have filed herein their certified answers thereto, which in substance set forth that neither of them has any money or other property of any nature owing to the above-named defendants, or either of them; that said certificates of the garnishees in their present form are unsatisfactory to the plaintiff.

## VII.

That on or about June 27, 1955, the plaintiff notified the garnishees Connecticut Fire Insurance Company and Northwest Casualty Co. of the entry of the judgment referred to in Paragraph I hereof,



and demanded settlement and satisfaction thereof. That more than six months have expired since said notification and demand and said garnishees have failed and refused to make any settlement or payment on said judgment. That pursuant to the provisions of ORS 736.325 plaintiff is entitled to recover in addition to the amount of said judgment such sum as the above-entitled court may adjudge reasonable as her attorney's fees in this proceeding.

### VIII.

That the plaintiff has served the foregoing allegations upon said garnishees.

Wherefore plaintiff demands judgment against the garnishees Connecticut Fire Insurance Company and Northwest Casualty Co., and each of them, for the sum of \$10,427.70, together with interest thereon at the rate of six per cent (6%) per annum from June 7, 1955, and such sum as the court may adjudge reasonable as her attorney's fees in this proceeding.

/s/ FRANK McK. BOSCH,  
Of Attorneys for Plaintiff.

Service of copy acknowledged.

[Endorsed]: Filed March 16, 1956.

---

[Title of District Court and Cause.]

### ANSWER

Comes now Northwest Casualty Company as garnishee and for answer to the supplemental allegations of the plaintiff admits, and denies as follows:

I.

Admits the allegations of Paragraphs I, III, IV, VI and VIII.

II.

The answering garnishee has no information regarding the truth of the allegations regarding the information in Paragraph II, therefore, denies the same.

III.

Denies the allegations of Paragraph V.

IV.

Answering the allegations of Paragraph VII, admits that the plaintiff notified the Northwest Casualty Co. of the entry of the judgment and demanded settlement thereof and that more than six months have elapsed since the date of such notification and denies the remaining allegations in said paragraph.

Wherefore, having fully answered, the Northwest Casualty Co. garnishee prays for judgment and decree dismissing the supplemental allegations of the plaintiff.

/s/ WM. C. RALSTON,

Of Attorneys for Northwest  
Casualty Company.

Service of copy acknowledged.

[Endorsed]: Filed February 14, 1956.

[Title of District Court and Cause.]

ANSWER OF GARNISHEE, CONNECTICUT  
FIRE INSURANCE COMPANY, TO SUP-  
PLEMENTAL ALLEGATIONS OF PLAIN-  
TIFF

Comes now Connecticut Fire Insurance Com-  
pany, garnishee, and for answer to the Supple-  
mental Allegations of plaintiff on file herein, denies  
each and every allegation therein contained and  
the whole thereof, except as expressly admitted,  
stated or qualified herein or in the answer of this  
garnishee to the allegations of plaintiff heretofore  
filed herein, and except that this garnishee admits  
that on or about June 27, 1955, plaintiff notified  
this garnishee and the Northwest Casualty Co., of  
the entry of the judgment referred to in Para-  
graph I of said Supplemental Allegations of plain-  
tiff and admits that more than six months have ex-  
pired since said notification.

Wherefore, having fully answered, this garnishee  
prays that plaintiff take nothing.

/s/ W. H. MORRISON,

/s/ HOWARD K. BEEBE.

Service of copy acknowledged.

[Endorsed]: Filed February 23, 1956.



[Title of District Court and Cause.]

REPLY OF PLAINTIFF TO ANSWERS OF  
GARNISHEE, CONNECTICUT FIRE IN-  
SURANCE COMPANY

Comes now the plaintiff and for reply to the answers of garnishee, Connecticut Fire Insurance Company, to allegations and supplemental allegations of plaintiff denies each and every allegation contained in said answers and the whole thereof, except such portions thereof as admit allegations of plaintiff and supplemental allegations of plaintiff.

Wherefore, plaintiff reiterates the prayer contained in supplemental allegations of plaintiff.

/s/ FRANK BOSCH,  
Attorney for Plaintiff.

Service of copy acknowledged.

[Endorsed]: Filed March 19, 1956.

---

[Title of District Court and Cause.]

REPLY OF PLAINTIFF TO ANSWERS OF  
GARNISHEE, NORTHWEST CASUALTY  
COMPANY

Comes now the plaintiff and for reply to the answers of garnishee, Northwest Casualty Co., to allegations and supplemental allegations of plaintiff

denies each and every allegation contained in said answers and the whole thereof, except such portions thereof as admit allegations of plaintiff and supplemental allegations of plaintiff.

Wherefore, plaintiff reiterates the prayer contained in supplemental allegations of plaintiff.

/s/ FRANK McK. BOSCH,  
Attorney for Plaintiff.

Service of copy acknowledged.

[Endorsed]: Filed March 19, 1956.

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[Title of District Court and Cause.]

#### AGREED STATEMENT OF FACTS

This matter is before the court as a proceeding on and in aid of a writ of execution heretofore issued by the clerk of the above-entitled court and pursuant to Federal Rules of Civil Procedure, Rule 69, is conducted in accordance with the practice and procedure in such cases provided by the statutes of the State of Oregon. The issues are framed by the following pleadings on file herein:

- (1) Allegations of plaintiff;
- (2) Answer of garnishee Connecticut Fire Insurance Company;
- (3) Answer of garnishee Northwest Casualty Company;
- (4) Supplemental allegations of plaintiff;
- (5) Answer of garnishee Connecticut Fire Insurance to Supplemental Allegations of Plaintiff;

(6) Answer of garnishee Northwest Casualty Co. to Supplemental Allegations of Plaintiff;

(7) Reply of plaintiff to answers of garnishees.

### Admitted Facts

The following facts have been agreed upon by the parties hereto by and through their respective attorneys and require no proof:

#### I.

The above-entitled action was commenced by the plaintiff to recover damages sustained by the estate of plaintiff's intestate as a result of said intestate's wrongful death which occurred in an automobile accident on December 6, 1954, near The Dalles, Oregon. The trial of the above-entitled action has culminated in a judgment in favor of plaintiff and against defendants, and each of them, in the sum of \$10,238.00 plus costs and disbursements taxed at \$189.70. Said judgment was made and entered in the above-entitled court on June 7, 1955, and no part of said judgment has been paid.

#### II.

On December 6, 1954, the above-named defendant Charles Cox, also known as Charlie Cox, was the named insured in a policy of bodily injury liability and property damage liability insurance which had been issued by garnishee, Connecticut Fire Insurance Company, as policy No. ACC10763. A true copy of said policy No. ACC10763 is attached hereto marked "Exhibit A". On December 6, 1954,

there was in full force and effect a Certificate of Insurance on file with the Public Utilities Commissioner of Oregon which had been issued under said policy No. ACC10763 in compliance with the Motor Transportation Code of Oregon and the pertinent rules and regulations of the Public Utilities Commissioner of Oregon, and a photostatic copy of said Certificate of Insurance is attached hereto marked "Exhibit B."

### III.

Prior to March 19, 1954, the garnishee Northwest Casualty Company had issued a policy of bodily injury liability and property damage liability insurance to one Robert L. Ellis of Spokane, Washington, said policy being No. 906-3892. A specimen copy of said policy is attached hereto marked "Exhibit C". The daily report relating to said policy No. 906-3892 discloses that the Schedule of Automobiles specifically described as covered by said policy included a 1951 Ford F8 truck, motor No. FE1LB13758 and a 1953 Freuhauf semi-trailer, motor No. C28000. Said daily report also discloses that the name of the original insured, Robert L. Ellis, was crossed off and the name of the defendant Charlie Cox was substituted therefor in longhand. On December 6, 1954, there was in full force and effect a Certificate of Insurance on file with the Public Utilities Commissioner of Oregon which had been issued under said policy No. 906-3892 in favor of defendant Charles Cox and in compliance with the Motor Transportation Code of Oregon and the pertinent rules and regulations of the Public Utili-

ties Commissioner of Oregon. A photostatic copy of said Certificate of Insurance is attached hereto marked "Exhibit D".

IV.

Attached to and forming a part of both of said insurance policies was an endorsement approved by the Public Utilities Commissioner of Oregon (MP-944) and said endorsements were in full force and effect on December 6, 1954.

V.

A writ of execution has heretofore been issued by the clerk of the above-entitled court and that in response to a notice of garnishment directed to them the garnishees Connecticut Fire Insurance Company and Northwest Casualty Company, have filed herein their certified answers thereto, which in substance set forth that neither of them has any money or other property of any nature owing to the above-named defendants or either of them.

VI.

The motor vehicles which were involved in the aforesaid accident of December 6, 1954, which were owned by defendant Charles Cox and being operated by his employee, defendant Albert Earl Jones, were the following, to wit:

(1) A 1948 Peterbilt semitractor, motor or I.D. No. 50608, which was towing a

(2) 1952 Homemade semi-trailer, motor or I.D. No. 173068.

At the time of the accident the defendant Albert Earl Jones was operating said equipment from



Pasco, Washington, to Portland, Oregon. While the parties hereto do not specifically stipulate as to the purpose for which said equipment was being used at the time of the accident, it is nevertheless stipulated and agreed that if defendant Charles Cox was called to testify concerning said purpose he would testify to the same effect as he did in his deposition taken February 2, 1956, which deposition has heretofore been transcribed and filed herein.

## VII.

The 1952 Homemade semi-trailer referred to in Paragraph VI hereof was the same trailer specifically described in Connecticut policy No. ACC10763; said policy, however, did not describe said 1948 Peterbilt semi-tractor.

## VIII.

That plaintiff has complied with the requirements of ORS 736-325 relating to the giving of notice to the garnishees and more than six months has expired since receipt of said notice.

/s/ FRANK BOSCH,

Of Attorneys for Agnes H. Remillard, Administratrix of the Estate of Edward S. Remillard, Deceased.

/s/ HOWARD K. BEEBE,

Of Attorneys for Garnishee, Connecticut Fire Insurance Company.

/s/ WM. C. RALSTON,

Of Attorneys for Garnishee, Northwest Casualty Company.

EXHIBIT A

RENEWAL OF NO.

# The Connecticut

## Fire Insurance Company

### of Hartford, State of Connecticut.

ORGANIZED 1850 CAPITAL \$2,000,000

PACIFIC DEPARTMENT, SAN FRANCISCO, CALIFORNIA

## TERMS AND CONDITIONS

Name of insured: CHARLIE COX  
 Address: 4TH AND LEWIS, PASCO, WASHINGTON  
 Occupation: CONTRACTOR - SELF  
 Ownership: Except with respect to bailment lease, conditional sale, mortgage or other encumbrance the insured is the sole owner of the automobile, except as herein stated:  
 Loss Payee: Any loss under coverages D, E, F, G and H is payable as interest may appear to the named insured and NO EXCEPTIONS  
 Garage: The automobile will be principally garaged in the above town or city, county and state, unless otherwise stated herein: NO EXCEPTIONS  
 Policy Period: FROM JUNE 15, 1954 TO JUNE 15, 1955  
 12:01 A.M., standard time at the address of the insured as stated herein.

The insurance afforded is only with respect to such and so many of the following coverages as are indicated by specific premium charge or charges. The limit of the company's liability against each such coverage shall be as stated herein, subject to all the terms of this policy having reference thereto.

| COVERAGES   | LIMITS OF LIABILITY                                   | PREMIUM                  |
|---|---|--------------------------|
| Injury Liability  | \$ 25,000.00 each person<br>\$ 5,000.00 each accident | (1) (2)<br>\$ 66.70 6.67 |
| Damage Liability  | \$ 5,000.00 each accident                             | \$112.00 11.20           |
| Payments  | each person   | \$                       |
| Comprehensive—Loss of or Damage to the Automobile, Except by Collision or Upset but including Fire, Theft and Windstorm |   | \$                       |
| Collision or Upset  | Actual Cash Value less \$ deductible                  | \$                       |
| Lightning and Transportation  | \$  | \$                       |
| (Road Form)   | \$  | \$                       |
| Uninsured Additional Coverage   | \$  | \$                       |
|   | \$ HIRED - NON OWNED                                  | \$ BT 5.80 PD 1.0        |
| #1 CLASS 3CB, ITEM #2, 10% OF CLASS 3CB   | Total Premium   | \$ 203.37                |

Description of the automobile and facts respecting its purchase by the named insured and terms of any encumbrance:

| Trade Name    | Model        | Body Type; Truck Size;<br>Truck Load Capacity;<br>Tank Gallonage Capacity;<br>or Bus Seating Capacity | Serial Number<br>or<br>Motor Number | Number of<br>Cylinders |
|---------------|--------------|---|-------------------------------------|------------------------|
| AUTO CARRIAGE | TRACTOR      | 9000# GROSS   | (C70T164) (45-5813)                 |                        |
| HOME-OWNED    | SEMI TRAILER | 9000# GROSS   | S173068WN                           |                        |

| Actual Price or<br>When Purchased | Actual Cost<br>Including Equipment | Purchased   | Encumbrance | Installment Payments | Due Date and Amount of<br>Final Installment |
|-----------------------------------|------------------------------------|-------------|-------------|----------------------|---|
| Month                             | Year                               | New or Used | Number      | Amount of Each       |   |
| \$                                |                                    |             | \$          | \$                   | \$  |

Use: The purposes for which the automobile is to be used are "pleasure and business," unless otherwise stated herein:

COMMERCIAL

(a) The term "pleasure and business" is defined as personal, pleasure, family and business use. (b) The term "commercial" is defined as use principally in the business occupation of the named insured as stated in item 1, including occasional use for personal, pleasure, family and other business purposes. (c) Use of the automobile for the purposes stated includes the loading and unloading thereof.

Insured: JUNE 17, 1954  
 at PASCO, WASHINGTON

By \_\_\_\_\_  
 Authorized Agent





Exclusions

This policy does not apply:

\* \* \*

(c) under coverages A and B, while the automobile is used for the towing of any trailer owned or hired by the insured and not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile owned or hired by the insured and not covered by like insurance in the company;

\* \* \*

Oregon Public Utilities Commissioner

Endorsement for Motor Carrier Policies of Insurance for Bodily Injury Liability and Property Damage Liability—Automatic Coverage

The policy to which this endorsement is attached is an automobile bodily injury liability and property damage liability policy, and is hereby amended to assure compliance by the named insured, as a motor carrier of passengers or property with appropriate provisions of the Motor Transportation Code of Oregon, as amended, and the pertinent rules and regulations of the Public Utilities Commissioner of Oregon, promulgated in accordance with the provisions of the Motor Transportation Code of Oregon.

In consideration of the premium stated in the policy to which this endorsement is attached, or be-

comes a part, when duly countersigned, the company hereby agrees to pay any final judgment recovered against the named insured for bodily injury to or the death of any persons or loss of or damage to property of others (excluding injury to or death of the named insured's employees while engaged in the course of their employment, and loss of or damage to property owned or operated by or in the care, custody or control of the named insured, and property transported by the named insured, designated as cargo, and to any obligation for which the named insured may be held liable under any workmen's compensation law), resulting from the negligent operation, maintenance, ownership, or use of motor vehicles under permit issued to the named insured by the Public Utilities Commissioner of Oregon, or otherwise under the Oregon Motor Transportation Code, within the limits of liability hereinafter provided, regardless of whether such motor vehicles are specifically described in the policy or not. It is understood and agreed that upon failure of the company to pay any such final judgment recovered against the named insured, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment. The bankruptcy or insolvency of the name insured shall not relieve the company of any of its obligations hereunder. The liability of the company extends to such losses, damages, injuries, or deaths whether occurring on the route or in the territory authorized to be served by the named insured or elsewhere, within the State of

Oregon, but as respects this endorsement only while operating under the provisions of the Motor Transportation Code of Oregon.

The liability of the company on each motor vehicle for the following limits shall be a continuing one notwithstanding any recovery hereunder, in the following minimum amounts:

Type of Motor Vehicle

Each motor vehicle authorized for use in the transportation of property or persons.

Bodily Injury Limit for Each Person  
\$10,000. Liability Limit for Each Accident  
\$20,000. Property Damage Liability  
Limit for Each Accident \$10,000.

In the event the policy to which this endorsement is attached is issued for limits greater than those prescribed herein, the terms and conditions of this endorsement shall apply only to the minimum limits set forth in this endorsement.

Nothing contained in the policy or any endorsements thereon, nor the violation of any of the provisions of the policy or of any endorsement thereon by the named insured, shall relieve the company from liability hereunder or from the payment of any such final judgment, but as respects any equipment of the named insured while being operated by others under an interchange of equipment agreement or requirement, the insurance afforded by this

policy shall be excess over any other valid and collectible insurance available to the named insured.

The named insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy, except for the agreement contained in this endorsement.

Cancellation of this endorsement or of the policy to which it is attached may be effected by the company or the named insured giving not less than 15 days' notice in writing to the Public Utilities Commissioner of Oregon at his office in Salem, Oregon, said notice to commence to run from the date notice is actually received at the office of said Commissioner.

Attached to and forming part of Policy No. ACC 10763 issued by the Connecticut Fire Insurance Company (herein called company) of Hartford, Connecticut.

To Charlie Cox of Pasco, Washington.

Dated at Pasco, Washington this 4th Day of October, 1954.

.....

Authorized Company  
Representative.

Standard Form of Endorsement Prescribed by the  
Washington Public Service Commission

To Be Attached to and Made a Part of All Policies  
Insuring Motor Freight Carriers Subject to  
Regulation by the Washington Public Service  
Commission

(Form MV 1)

(Supersedes all endorsements heretofore required  
by said Commission)

The policy to which this endorsement is attached is an Automobile Bodily Injury Liability and Property Damage Liability policy, and is hereby amended to assure compliance by the insured, as a motor carrier of property, with appropriate provisions of law (Chapter 184, Laws of 1935 and acts amendatory thereof and supplemental thereto); and with the pertinent rules, orders and regulations of the Washington Public Service Commission.

In consideration of the premium provided for in the policy of which this endorsement is made a part the Company agrees that within the classes of coverage provided by the policy it will pay any final judgment rendered against the insured for bodily injuries to or death of any person or persons other than the named insured, or damage to or destruction of property, or both, arising out of the ownership, maintenance or use of any vehicle operated under authority of the aforesaid statutes, although such vehicle may not be specifically described in the policy; that the judgment creditor may maintain an



of one or more than one claimant in any one accident.

Nothing in this endorsement shall be construed to limit or restrict any coverage otherwise provided by the policy of which this endorsement is made a part.

When countersigned by an authorized representative of the Company this endorsement becomes a part of Policy No. ACC 10763 issued by Connecticut Fire Insurance Company (herein called Company) to Charlie Cox effective June 15, 1954 at 12:01 a.m., standard time at the address of the insured as stated in said policy.

Countersigned at Pasco, Washington, this 17th day of June, 1954.

By .....

Authorized Company  
Representative.

Note: This endorsement must be executed in accordance with "Conditions" of the policy.

## EXHIBIT B

55417-57025-64212

Motor Carrier Bodily Injury Liability and Property  
Damage Liability Automatic Coverage

Certificate of Insurance

Certificate No. ....

To be filed with the Public Utilities Commissioner,  
Salem, Oregon.

Motor Carrier Automobile Bodily Injury Liability  
and Property Damage Liability Automatic  
Coverage

Certificate of Insurance

Filed with

Public Utilities Commissioner, Salem, Oregon

This Is To Certify, that the Connecticut Fire Insurance Company (hereinafter called company) of Hartford, Connecticut has issued to Charlie Cox of 4th and Lewis, Pasco, Washington the policy of automobile bodily injury liability and property damage liability insurance herein described which by the attachment of endorsement approved by the Public Utilities Commissioner of Oregon, Form No. MP-944, has been amended to provide the coverage or security for the protection of the public required with respect to the operation, maintenance, ownership, or use of motor vehicles under permit issued to the named insured by the Public Utilities Commissioner of Oregon or otherwise under the Motor Transportation Code and the pertinent rules and regulations of the Public Utilities Commissioner of Oregon, regardless of whether such motor vehicles are specifically described in the policy or not. The liability of the company extends to all losses, damages, injuries, or deaths whether occurring on the route or in the territory authorized to be served by the named insured or elsewhere, within the state of Oregon.

Whenever requested by the Commissioner, the company agrees to furnish to the Commissioner a duplicate original of said policy and all endorsements thereon.

This certificate effective from September 10, 1954, to June 15, 1955 (12:01 a.m., standard time at the address of the named insured as stated in said policy), issued under Policy No. ACC 10763, and supersedes and cancels certificate effective.....  
....., 19.....

No. .... issued under above policy.

Countersigned at San Francisco, California, this 4th day of October, 1954.

/s/ H. NIELAUS,  
Authorized Company  
Representative.

## EXHIBIT C

\* \* \*

### Exclusions

\* \* \*

(c) under Coverages A and B, while the automobile is used for the towing of any trailer owned or hired by the insured and not covered by like insurance in the Company; or while any trailer cov-



ered by this policy is used with any automobile owned or hired by the insured and not covered by like insurance in the Company;

\* \* \*

## EXHIBIT D

Motor Carrier Bodily Injury Liability and  
Property Damage Liability Automatic Coverage

Certificate of Insurance

Certificate No. 2

To be filed with the Public Utilities Commissioner,  
Salem, Oregon.

Motor Carrier Automobile Bodily Injury Liability  
and Property Damage Liability Automatic  
Coverage

Certificate of Insurance

Filed with Public Utilities Commissioner  
Salem, Oregon

This is to Certify, that the Northwest Casualty Company, (hereinafter called company) of 217 Pine Street, Seattle, Washington, has issued to Charlie Cox of 507 N. 4th, Pasco, Wash. the policy of automobile bodily injury liability and property damage liability insurance herein described which by the attachment of endorsement approved by the Public Utilities Commissioner of Oregon, Form No. MP-944, has been amended to provide the coverage or

security for the protection of the public required with respect to the operation, maintenance, ownership, or use of motor vehicles under permit issued to the named insured by the Public Utilities Commissioner of Oregon or otherwise under the Motor Transportation Code and the pertinent rules and regulations of the Public Utilities Commissioner of Oregon, regardless of whether such motor vehicles are specifically described in the policy or not. The liability of the company extends to all losses, damages, injuries, or deaths whether occurring on the route or in the territory authorized to be served by the named insured or elsewhere, within the state of Oregon.

Whenever requested by the Commissioner, the company agrees to furnish to the Commissioner a duplicate original of said policy and all endorsements thereon.

This certificate effective from September 10, 1954, to March 19, 1955, (12:01 a.m., standard time at the address of the named insured as stated in said policy), and supersedes and cancels certificate effective September 22, 1954, No. 1, issued under Policy No. 906-3892.

Countersigned at Seattle, Wash., this 6th day of October, 1954.

/s/ W. H. CRESMAN,

Authorized Company Representative.

[Endorsed]: Filed April 2, 1956.

In the District Court of the United States for the  
District of Oregon

Civil No. 7891

AGNES H. REMILLARD, Administratrix of the  
Estate of Edward S. Remillard, Deceased,  
Plaintiff,

vs.

CHARLES COX and ALBERT EARL JONES,  
Defendants,

CONNECTICUT FIRE INSURANCE COM-  
PANY,

Garnishee,

NORTHWEST CASUALTY CO.,

Garnishee,

OBJECTIONS OF GARNISHEE, THE CON-  
NECTICUT FIRE INSURANCE COM-  
PANY, TO PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW

Comes now The Connecticut Fire Insurance Com-  
pany, garnishee herein, and respectfully objects to  
the findings of fact and conclusions of law as fol-  
lows:

I.

Objects to finding number VI, upon the ground  
and for the reason that the same is not a finding of  
fact but is a conclusion of law; upon the ground  
and for the reason that the same disregards en-

tirely the force and effect of Exclusion "c" of this garnishee's policy which reads as follows:

"(c) under coverages A and B, while the automobile is used for the towing of any trailer owned or hired by the insured and not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile owned or hired by the insured and not covered by like insurance in the company;"

## II.

Objects further to any inferred or implied finding that the vehicles involved in the accident were being operated pursuant to any permit issued by the Public Utilities Commissioner of the State of Oregon upon the ground and for the reason that the evidence affirmatively shows that it was not necessary to have a permit from the Public Utilities Commissioner of the State of Oregon in order to operate said vehicles upon the highway at the time and place of the accident which gave rise to plaintiff's judgment herein.

## III.

Objects to conclusion of law number I, upon the ground and for the reason that the evidence affirmatively shows that the insurance policy of this garnishee excluded coverage for the accident which gave rise to plaintiff's judgment because said policy did not specifically describe the 1948 Peterbuilt tractor which was involved in that accident and specifically excluded coverage with respect to said

homemade trailer while it was being towed by any vehicle other than the 1948 Autocar tractor described in this garnishee's said policy; and this garnishee further objects to said conclusion of law upon the ground and for the reason that even if this garnishee is liable by virtue of the Public Utilities Commissioner's endorsement (MP-944) attached to said policy it would, in any event, be liable only to the extent of \$10,000.00 and would not be liable for the full amount of said judgment.

#### IV.

Objects to conclusion of law number II, upon the ground and for the reason that there is not competent or substantial evidence to support a judgment against this garnishee and upon the further ground that the evidence affirmatively shows that this garnishee is not liable to plaintiff for any sum whatsoever.

/s/ HOWARD K. BEEBE.

Service of Copy acknowledged.

[Endorsed]: Filed April 19, 1956.



[Title of District Court and Cause.]

GARNISHEE, THE CONNECTICUT FIRE  
INSURANCE COMPANY'S PROPOSED  
OTHER, ADDITIONAL AND AMENDED  
FINDINGS OF FACT AND CONCLU-  
SIONS OF LAW

This matter coming on regularly for trial before the Hon. William G. East, Judge of the above-entitled court, on April 5, 1956, to determine whether the garnishees, The Connecticut Fire Insurance Company and Northwest Casualty Company, had any property as to which such garnishees were required to give a certificate as provided for in ORS 29.280. Pursuant to Federal Rules of Civil Procedure, Rule 69, the trial was conducted in accordance with the practice and procedure in such cases made and provided by the statutes of the State of Oregon. Plaintiff, as the judgment creditor, appearing by her attorney, Frank McK. Bosch, the garnishee The Connecticut Fire Insurance Company appearing by one of its attorneys, Howard K. Beebe, and the garnishee Northwest Casualty Company appearing by one of its attorneys, submitted to the court an agreed statement of facts and thereafter the court heard statements and arguments by respective counsel concerning the issues to be resolved, and having considered the same and being fully advised in the premises, makes the following:

## Findings of Fact

## I.

The above-entitled action was commenced by the plaintiff to recover damages sustained by the estate of plaintiff's intestate as a result of said intestate's wrongful death, which occurred in an automobile accident on December 6, 1954, near The Dalles, Oregon. The trial of said action has culminated in a judgment in favor of plaintiff and against defendants, and each of them, in the sum of \$10,238.00 plus costs and disbursements taxed at \$189.70. The judgment was made and entered in the above-entitled court on June 7, 1955, and no part thereof has been paid.

## II.

That on December 6, 1954, the defendant Charles Cox, also known as Charlie Cox, was the named insured in a policy of bodily injury liability and property damage liability insurance which had been issued by garnishee Connecticut Fire Insurance Company as policy No. ACC 10763, to which was attached an endorsement approved by the Public Utilities Commissioner of the State of Oregon (MP-944), and that said policy and said endorsement were in full force and effect on December 6, 1954.

## III.

That on December 6, 1954, the defendant Charles Cox, also known as Charlie Cox, was the named insured in a policy of bodily injury liability and



property damage liability insurance which had been issued by garnishee Northwest Casualty Co. as policy No. 906-3892, to which was attached an endorsement approved by the Public Utilities Commissioner of the State of Oregon (MP-944), and that said policy and said endorsement were in full force and effect on December 6, 1954.

#### IV.

That the motor vehicles which were involved in the aforesaid accident of December 6, 1954, which were owned by defendant Charles Cox and operated by his employee, defendant Albert Earl Jones, were the following to wit:

(1) 1948 Peterbuilt tractor, motor or I.D. No. 50608, which was towing:

(2) 1952 Homemade trailer, motor or I.D. No. 173068.

That at the time of the accident the defendant Albert Earl Jones was operating said equipment from Pasco, Washington, to Portland, Oregon, for the purpose of having necessary repairs made to the tractor at Portland, Oregon; at the time and place of said accident, said equipment was not being operated as a common, private or contract carrier in the transportation of persons or property or either.

#### V.

That the 1952 Homemade trailer referred to in Paragraph IV hereof was specifically described in

The Connecticut Fire Insurance Company policy No. ACC 10763, but neither this policy nor policy No. 906-3892 of Northwest Casualty Company specifically described the 1948 Peterbuilt tractor referred to in Paragraph IV. The policy issued by garnishee the Connecticut Fire Insurance Company, excluded coverage under Exclusion “(c)” of its said policy as follows:

“(c) under coverages A and B, while the automobile is used for the towing of any trailer owned or hired by the insured and not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile owned or hired by the insured and not covered by like insurance in the company;”

Based upon the above Findings of Fact, the court deduces the following

### Conclusions of Law

#### I.

At the time and place of the accident which gave rise to the plaintiff's judgment herein, said motor vehicle equipment was not being operated under any permit issued by the Public Utilities Commissioner of Oregon or otherwise under the Motor Transportation Code of the State of Oregon. Therefore, the coverage for said accident is excluded under Exclusion “(c)” of the policy issued by The Connecticut Fire Insurance Company and the provisions of the Public Utilities Commissioner of Ore-

gon's endorsement attached thereto is not applicable to said accident and the judgment heretofore obtained by plaintiff herein.

## II.

By reason of the fact that neither piece of equipment involved in said accident was described in the policy of Northwest Casualty Company and by reason of the nonapplicability of the Public Utilities Commissioner of Oregon's endorsement attached to said policy, plaintiff is not entitled to recover against garnishee Northwest Casualty Company.

## III.

Plaintiff's allegations and supplemental allegations should be dismissed and plaintiff should take nothing from garnishees or either of them.

Dated this . . . . day of April, 1956.

.....,

Judge.

Service of copy acknowledged.

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[Title of District Court and Cause.]

## OBJECTIONS OF GARNISHEE, NORTHWEST CASUALTY CO., TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Comes now the Northwest Casualty Company, garnishee herein, and respectfully objects to the

findings of fact and conclusions of law heretofore filed by the Administratrix of the Estate of Edward S. Remillard as follows:

### I.

Objects to finding number VII, upon the ground and for the reason that the policy of the Northwest Casualty Company, No. 906-3892, did not, at any time, cover the vehicles involved in the accident described in administratrix's findings of fact and conclusions of law, and that the certificate of the Public Utilities Commissioner of the State of Oregon and the endorsement attached to such policy and approved by the Public Utilities Commissioner of the State of Oregon, MP-944, did not extend coverage to the defendants Charles Cox and Albert Earl Jones for the accident described in findings of fact number I, nor was there any coverage whatsoever insofar as the garnishee Northwest Casualty Company is concerned, and further objects to said findings on the ground and for the reason that it is not a finding of fact but a proposed conclusion of law in its entirety.

### II.

Objects to any finding, either in fact or in law, implied or inferred, that the vehicles involved in the accident were being operated pursuant to any permit and license issued by the Public Utilities Commissioner of the State of Oregon on the ground and for the reason that any such finding is contrary to the preponderance of the affirmative evidence in this cause and against the law; that it was not necessary

to have any permit from the Public Utilities Commissioner to operate the said vehicles over and along the highway of the State of Oregon and at the time and place of the accident, which resulted in the plaintiff's judgment herein.

### III.

Objects to finding number IX on the ground and for the reason that any notice to the Northwest Casualty Company was a nullity and of no avail due to the fact that there was no coverage extended by the said Northwest Casualty Company.

### IV.

Objects to conclusion of law number I on the ground and for the reason that the evidence conclusively establishes that the Northwest Casualty Company did not extend coverage for the accident which gave rise to the judgment in this cause; that the said conclusion is contrary to the affirmative evidence; that in no event should the Northwest Casualty Company be liable under its policy to this plaintiff in a greater sum than \$10,000.00 if its policy were involved, and would not be liable for the full amount of the judgment as in this conclusion recited.

### V.

Objects to conclusion of law number II on the ground and for the reason that there is no competent or conclusive evidence supporting any judgment against this garnishee and for the further reason that the evidence conclusively and affirma-



tively shows that the policy of this garnishee did not cover the said accident and further shows that this garnishee is not liable to the plaintiff for any sum whatsoever.

/s/ W. K. PHILLIPS,

W. K. Phillips and Wm. C. Ralston, Attorneys for  
Garnishee Northwest Casualty Company.

Service of copy acknowledged.

[Endorsed]: Filed April 20, 1956.

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[Title of District Court and Cause.]

GARNISHEE NORTHWEST CASUALTY COM-  
PANY'S PROPOSED OTHER, ADDI-  
TIONAL AND AMENDED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW

This matter coming on regularly for trial before the Honorable William G. East, Judge of the above-entitled court, on April 5, 1956, to determine whether the garnishees, The Connecticut Fire Insurance Company and Northwest Casualty Company, had any property as to which such garnishees were required to give a certificate as provided for in ORS 29.280. Pursuant to Federal Rules of Civil Procedure, Rule 69, the trial was conducted in accordance with the practice and procedure in such cases made and provided by the statutes of the State of Oregon. Plaintiff, as the judgment creditor, appearing by her attorney, Frank McK. Bosch,

the garnishee The Connecticut Fire Insurance Company appearing by one of its attorneys, Howard K. Beebe, and the garnishee Northwest Casualty Company appearing by Wm. C. Ralston, submitted to the court an agreed statement of facts and thereafter the court heard statements and arguments by respective counsel concerning the issue to be resolved, and having considered the same and being fully advised in the premises, makes the following

### Findings of Fact

#### I.

The above-entitled action was commenced by the plaintiff to recover damages sustained by the estate of plaintiff's intestate as a result of said intestate's wrongful death, which occurred in an automobile accident on December 6, 1954, near The Dalles, Oregon. The trial of said action has culminated in a judgment in favor of plaintiff and against defendants, and each of them, in the sum of \$10,238.00 plus costs and disbursements taxed at \$189.70. The judgment was made and entered in the above-entitled court on June 7, 1955, and no part thereof has been paid.

#### II.

That on December 6, 1954, the defendant Charles Cox, also known as Charlie Cox, was the named insured in a policy of bodily injury liability and property damage liability insurance which has been issued by garnishee Connecticut Fire Insurance Company as policy No. ACC 10763, to which was



attached an endorsement approved by the Public Utilities Commissioner of the State of Oregon (MP-944), and that said policy and said endorsement were in full force and effect on December 6, 1954.

### III.

That on December 6, 1954, the defendant Charles Cox, also known as Charlie Cox, was the named insured in a policy of bodily injury liability and property damage liability insurance which had been issued by garnishee Northwest Casualty Co. as policy No. 906-3892, to which was attached an endorsement approved by the Public Utilities Commissioner of the State of Oregon (MP-944), and that said policy and said endorsement were in full force and effect on December 6, 1954.

### IV.

That the motor vehicles which were involved in the aforesaid accident of December 6, 1954, which were owned by defendant Charles Cox and operated by his employee, defendant Albert Earl Jones, were the following, to wit:

(1) 1948 Peterbuilt tractor, motor or I.D. No. 50608, which was towing;

(2) 1952 Homemade trailer, motor or I.D. No. 173068.

That at the time of the accident the defendant Albert Earl Jones was operating said equipment from Pasco, Washington, to Portland, Oregon, for the purpose of having necessary repairs made to

the tractor at Portland, Oregon; at the time and place of said accident, said equipment was not being operated as a common, private or contract carrier in the transportation of persons or property or either.

## V.

That the vehicles involved in this accident were not covered by the policy of the Northwest Casualty Company specifically described as No. 906-3892, and that the said vehicles were not being used and operated under any permit issued by the Public Utilities Commissioner of the State of Oregon under the Motor Transportation Code of the State of Oregon, and that said endorsement did not extend coverage to this accident.

Based upon the above Findings of Fact, the court deduces the following

## Conclusions of Law

### I.

That at the time and place of the accident which gave rise to the plaintiff's judgment herein, the said motor vehicle equipment was not being operated under any permit issued by the Public Utilities Commissioner of the State of Oregon or otherwise under the Motor Transportation Code of the State of Oregon.

### II.

That the insurance policy issued by the garnishee Northwest Casualty Company did not cover the defendants in the accident which gave rise to this

judgment and that the provisions of the Public Utilities Commissioner of Oregon's endorsement attached thereto does not extend coverage and is not applicable to the said accident resulting in the judgment heretofore obtained by the plaintiff herein.

III.

That the plaintiff's allegations and supplemental allegations should be dismissed and the plaintiff should take nothing from the garnishees herein or either of them.

IV.

That the garnishee Northwest Casualty Company is not liable under its policy for any amount whatsoever to this plaintiff.

Dated this . . . . day of April, 1956.

.....,  
Judge.

---

[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This matter coming on regularly for trial before the Hon. William G. East, Judge of the above-entitled court, on April 5, 1956, to determine whether the garnishees, Connecticut Fire Insurance Company and Northwest Casualty Company, had any property as to which such garnishees were

required to give a certificate as provided for in O.R.S. 29.280. Pursuant to Federal Rules of Civil Procedure, Rule 69, the trial was conducted in accordance with the practice and procedure in such cases made and provided by the statutes of the State of Oregon. Plaintiff, as the judgment creditor, appearing by her attorney, Frank McK. Bosch, the garnishee, Connecticut Fire Insurance Company, appearing by one of its attorneys, Howard K. Beebe, and the garnishee, Northwest Casualty Company, appearing by one of its attorneys, William C. Ralston. The parties, by and through their respective attorneys, submitted to the Court an agreed statement of facts and thereafter the court heard statements and arguments by respective counsel concerning the issues to be resolved, and having considered the same and being fully advised in the premises, requested counsel for the plaintiff to draw appropriate Findings of Fact and Conclusions of Law in conformity with a letter opinion of the Court, and there being objections to said counsel's proposed Findings and Conclusions, and the Court having heard the statements and arguments of counsel concerning the same, now on its own behalf, makes the following.

### Findings of Fact

#### I.

The above-entitled action was commenced by the plaintiff to recover damages sustained by the estate of plaintiff's intestate as a result of said in-

testate's wrongful death, which occurred in an automobile accident on December 6, 1954, near The Dalles, Oregon. The trial of said action has culminated in a judgment in favor of plaintiff and against defendants, and each of them, in the sum of \$10,238.00, plus costs and disbursements taxed at \$189.70. The judgment was made and entered in the above-entitled Court on June 7, 1955, and no part thereof has been paid.

## II.

That on December 6, 1954, the defendant Charles Cox, also known as Charlie Cox, was the named insured in a policy of bodily injury liability and property damage liability insurance which has been issued by garnishee, Connecticut Fire Insurance Company as Policy No. ACC 10763, and which policy had among its provisions "Exclusion (c)" reading as follows:

"(c) under coverages A and B, while the automobile is used for the towing of any trailer owned or hired by the insured and not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile owned or hired by the insured and not covered by like insurance in the company;"

## III.

That on December 6, 1954, the defendant, Charles Cox, also known as Charlie Cox, was the named insured in a policy of bodily injury liability and property damage liability insurance which had been



issued by garnishee, Northwest Casualty Co., as Policy No. 906-3892, and which policy had among its provisions "Exclusion (c)" reading as follows:

"(c) under coverages A and B, while the automobile is used for the towing of any trailer owned or hired by the insured and not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile owned or hired by the insured and not covered by like insurance in the company;"

#### IV.

That under date of October 4, 1954, the garnishee, Connecticut Fire Insurance Company, issued and filed with the Public Utilities Commissioner of the State of Oregon, at Salem, Oregon, its "Certificate of Insurance" wherein it certified that it had issued to Charlie Cox the policy of automobile bodily injury liability and property damage liability insurance therein described and being the aforesaid Policy No. ACC 10763 to provide the coverage and security for the protection of the public required with respect to the operation, maintenance, ownership or use of motor vehicles under permit issued to the named insured, or otherwise under the Motor Transportation Code and the pertinent rules and regulations of the Public Utilities Commissioner of Oregon, regardless of whether such motor vehicles are specifically described in the policy or not. The liability of the said company extends to all loss, damage, injuries or deaths whether occurred on the



route or in the territory authorized to be served by the named insured or elsewhere within the State of Oregon, which certificate was effective from September 10, 1954, to June 15, 1955.

## V.

Under date of October 6, 1954, the garnishee, Northwest Casualty Company, issued and filed with the Public Utilities Commissioner of the State of Oregon, at Salem, Oregon, its "Certificate of Insurance" wherein it certified that it had issued to Charlie Cox the policy of automobile bodily injury liability and property damage liability insurance therein described and being the aforesaid Policy No. 906-3892, to provide the coverage and security for the protection of the public required with respect to the operation, maintenance, ownership or use of motor vehicles under permit issued to the named insured, or otherwise under the Motor Transportation Code and the pertinent rules and regulations of the Public Utilities Commissioner of Oregon, regardless of whether such motor vehicles are specifically described in the policy or not. The liability of the said company extends to all loss, damage, injuries or deaths whether occurred on the route or in the territory authorized to be served by the named insured or elsewhere within the State of Oregon, which certificate was effective from September 10, 1954, to March 19, 1955.

## VI.

That as a result of the filing of the aforesaid certificates of insurance there was attached to and

forming a part of each of the aforesaid insurance policies issued by the garnishees, Connecticut Fire Insurance Company, and Northwest Casualty Company, respectively, an endorsement approved by the Public Utilities Commissioner of Oregon (MP-944) and said endorsements were in full force and effect on December 6, 1954.

## VII.

That the motor vehicles which were owned by the defendant, Charles Cox, and operated by his employee, the defendant, Albert Earl Jones, and which were involved in the aforesaid accident of December 6, 1954, were the following:

(1) 1948 Peterbuilt tractor, motor or I.D. No. 50608, which was towing

(2) 1952 Homemade trailer, motor of I.D. No. 173068.

Further, at the time of the aforesaid accident, said defendant, Albert Earl Jones, was operating said equipment on the route from Pasco, Washington, to Portland, Oregon, for the purpose of having made to the tractor necessary repairs at Portland, Oregon, which repairs were proper and necessary in order that the said tractor should be kept fit for operation in connection with its business as a common carrier for which the aforesaid certificates of insurance were filed with the Public Utilities Commissioner of the State of Oregon, by the two garnishees, respectively.

## VIII.

That the 1952 Homemade trailer referred to in Paragraph VII hereof was specifically described in Connecticut Fire Insurance Company policy #ACC 10763, but neither this policy nor policy #906-3892 of Northwest Casualty Company specifically described the 1948 Peterbuilt tractor referred to in Paragraph VII.

## IX.

That a writ of execution has heretofore been issued by the Clerk of the above-entitled Court and pursuant thereto a notice of garnishment has been served upon the garnishee, Connecticut Fire Insurance Company, and notice of garnishment has been served upon the garnishee, Northwest Casualty Company.

## X.

That on or about June 27, 1955, the plaintiff notified the garnishees, Connecticut Fire Insurance Company and Northwest Casualty Company, of entry of judgment referred to in Paragraph I hereof and demanded settlement and satisfaction thereof. That more than six months have expired since said notification and demand and the garnishees have refused to make any payment on said judgment.

## XI.

That a reasonable attorney's fee for the plaintiff to recover herein is in the amount of Three Hundred Fifty Dollars (\$350.00).

Based upon the above Findings of Fact, the Court deduces the following

Conclusions of Law

I.

That the aforesaid certificates of insurance issued and filed with the Public Utilities Commissioner of the State of Oregon by the garnishees, respectively, are a binding statutory obligation running in favor of the public and particularly the plaintiff's decedent herein on account of bodily injuries resulting from the operation of the vehicle referred to on the highway of the State of Oregon, in the maximum sum of Ten Thousand Dollars (\$10,000.00) with the right of equal contribution between them.

II.

That the plaintiff is entitled to recover judgment against the garnishees, Connecticut Fire Insurance Company and Northwest Casualty Company, jointly and severally, in the sum of Ten Thousand Dollars (\$10,000.00) together with interest thereon at the rate of six (6) per cent per annum from June 27, 1955, until paid, and the further sum of Three Hundred Fifty Dollars (\$350.00) attorney's fees, and for plaintiff's costs and disbursements of action to be taxed, with the right of equal contribution between them.

Dated April 25, 1956.

/s/ WILLIAM G. EAST,  
U. S. District Judge.

[Endorsed]: Filed April 25, 1956.

In the District Court of the United States  
for the District of Oregon

Civil No. 7891

AGNES H. REMILLARD, Administratrix of the  
Estate of Edward S. Remillard, Deceased,

Plaintiff,

vs.

CHARLES COX and ALBERT EARL JONES,

Defendants;

CONNECTICUT FIRE INSURANCE COM-  
PANY,

Garnishee;

NORTHWEST CASUALTY CO.,

Garnishee.

### JUDGMENT

Based upon the Findings of Fact and Conclusions  
of Law heretofore duly made and filed herein,

It Is Hereby Considered, Adjudged and Ordered,  
that the plaintiff have and recover judgment against  
the Garnishees, Connecticut Fire Insurance Com-  
pany and Northwest Casualty Company, jointly and  
severally, in the sum of Ten Thousand Dollars  
(\$10,000.00) together with interest thereon at the  
rate of six (6) per cent per annum from June 27,  
1955, until paid, and the further sum of Three Hun-  
dred Fifty Dollars (\$350.00) attorney's fees, and  
for plaintiff's costs and disbursements of action to



be taxed, with the right of equal contribution between them.

Dated April 25, 1956.

/s/ WILLIAM G. EAST,  
U. S. District Judge.

[Endorsed]: Filed April 25, 1956.

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[Title of District Court and Cause.]

NOTICE OF APPEAL OF GARNISHEE CON-  
NECTICUT FIRE INSURANCE COMPANY

Notice is hereby given that Connecticut Fire Insurance Company, garnishee above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on April 25, 1956.

/s/ HOWARD K. BEEBE,  
Attorney for Appellant.

[Endorsed]: Filed May 23, 1956.

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[Title of District Court and Cause.]

NOTICE OF APPEAL

(Agnes H. Remillard)

Notice Is Hereby Given that Agnes H. Remillard, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from



that portion of the judgment entered in this action on April 25, 1956, which restricts the plaintiff's recovery against the above-named garnishees to the sum of Ten Thousand Dollars (\$10,000.00).

/s/ FRANK McK. BOSCH,  
Attorney for Appellant,  
Agnes H. Remillard.

[Endorsed]: Filed May 24, 1956.

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[Title of District Court and Cause.]

NOTICE OF APPEAL OF NORTHWEST  
CASUALTY CO., GARNISHEE

Notice is hereby given that Northwest Casualty Co., garnishee above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on April 25, 1956.

/s/ WM. C. RALSTON,  
Of Attorneys for Appellants.

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[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH  
APPELLANT INTENDS TO RELY

Comes now appellant and files this, its statement of points on which appellant intends to rely on the appeal of this cause, to wit:

(1) The trial court erred in concluding as a matter of law as follows, to wit:

“Conclusions of Law

“I.

“That the aforesaid certificates of insurance issued and filed with the Public Utilities Commissioner of the State of Oregon by the garnishees, respectively, are a binding statutory obligation running in favor of the public and particularly the plaintiff’s decedent herein on account of bodily injuries resulting from the operation of the vehicle referred to on the highway of the State of Oregon, in the maximum sum of Ten Thousand Dollars (\$10,000.00) with the right of equal distribution between them.

“II.

“That the plaintiff is entitled to recover judgment against the garnishees, Connecticut Fire Insurance Company and Northwest Casualty Company, jointly and severally, in the sum of Ten Thousand Dollars (\$10,000.00) together with interest thereon at the rate of six (6) per cent per annum from June 27, 1955, until paid, and the further sum of Three Hundred Fifty Dollars (\$350.00) attorney’s fees, and for plaintiff’s costs and disbursements of action to be taxed, with the right of equal contribution between them.”

upon the ground and for the reason that there is not competent or substantial evidence to support a judgment against appellant, Connecticut Fire In-

insurance Company, and upon the further ground that the evidence affirmatively shows that appellant, Connecticut Fire Insurance Company, is not liable to plaintiff in any sum whatsoever, inasmuch as it demonstrates that the insurance policy of appellant excluded coverage for the accident which gave rise to plaintiff's judgment, and that the vehicles involved in the accident were not being operated pursuant to any permit issued by the Public Utilities Commissioner of the State of Oregon.

Respectfully submitted this 1st day of June, 1956.

/s/ HOWARD K. BEEBE,

Of Attorneys for Appellant.

Service of copy acknowledged.

[Endorsed]: Filed June 1, 1956.

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[Title of District Court and Cause.]

## STATEMENT OF POINTS OF NORTHWEST CASUALTY COMPANY

Appellant Northwest Casualty Co. intends to rely upon the following points in the appeal of the above-entitled cause, namely:

### I.

The vehicles involved in the accident were not covered by the policy of the Northwest Casualty Co. as described in Policy No. 906-3892, and further said vehicles were not being used and operated

under any permit issued by the Public Utilities Commissioner of the State of Oregon under the Oregon Motor Transportation Code and the Public Utilities Commissioner's endorsement did not extend coverage to the accident.

1. The trial court should have made the findings that the equipment was not being operated as a common, private or contract carrier and that the vehicles were not being used under any Public Utilities Commissioner permit as requested and proposed in findings numbers 4 and 5 of the Northwest Casualty Co.

2. The trial court erred in concluding as a matter of law as follows:

#### “Conclusions of Law

##### “I.

“That the aforesaid certificates of insurance issued and filed with the Public Utilities Commissioner of the State of Oregon by the garnishees, respectively, are a binding statutory obligation running in favor of the public and particularly the plaintiff's decedent herein on account of bodily injuries resulting from the operation of the vehicle referred to on the highway of the State of Oregon, in the maximum sum of Ten Thousand Dollars (\$10,000.00) with the right of equal contribution between them.”

##### II.

The evidence established that at the time of the accident, the vehicles and equipment of the defend-

ant Charles Cox were on the highway for the purpose of being taken to Portland for needed repairs and that there was no hauling of goods or passengers under the provisions of the Public Utilities Commission permit issued by the State of Oregon.

1. The Court erred in concluding as a matter of law that:

“II.

“That the plaintiff is entitled to recover judgment against the garnishees, Connecticut Fire Insurance Company and Northwest Casualty Company, jointly and severally, in the sum of Ten Thousand Dollars (\$10,000.00) together with interest thereon at the rate of six (6) per cent per annum from June 27, 1955, until paid, and the further sum of Three Hundred Fifty Dollars (\$350.00) attorney’s fees, and for plaintiff’s costs and disbursements of action to be taxed, with the right of equal contribution between them.”

III.

The Court erred in not entering a judgment in favor of the appellant Northwest Casualty Co.

/s/ WM. C. RALSTON,  
Of Attorneys for Appellant Northwest Casualty  
Company.

[Endorsed]: Filed June 6, 1956.

In the District Court of the United States for the  
District of Oregon

Civil No. 7891

AGNES H. REMILLARD, Administratrix of the  
Estate of EDWARD S. REMILLARD, De-  
ceased,

Plaintiff,

vs.

CHARLES COX and ALBERT EARL JONES,  
Defendants,

NORTHWEST CASUALTY COMPANY, a Cor-  
poration, and CONNECTICUT FIRE IN-  
SURANCE COMPANY, a Corporation,

Garnishees.

### DEPOSITION OF CHARLES COX

Be It Remembered that heretofore, to wit, on  
Thursday, February 2, 1956, at 2:00 o'clock p.m., at  
the offices of Messrs. Ryan & Pelay, Attorneys at  
Law, Equitable Building, Portland, Oregon, pursu-  
ant to stipulation and agreement of counsel for the  
respective parties hereto, the matter of the taking  
of the deposition of Charles Cox, one of the de-  
fendants, called for examination in behalf of the  
plaintiff and the garnishees, came regularly on be-  
fore Roscoe F. Hunt, a Notary Public for the State  
of Oregon.



(Deposition of Charles Cox.)

Appearances:

FRANK McK. BOSCH, ESQ.,

Of Attorneys for Plaintiff.

JOHN D. RYAN, ESQ.,

Of Attorneys for Defendant Cox. [1\*]

WM. C. RALSTON, ESQ.,

Of Attorneys for Defendant Northwest Casualty Company.

HOWARD K. BEEBE, ESQ.,

Of Attorneys for Defendant Connecticut Fire Insurance Company.

### STIPULATION

(It was stipulated and agreed by and between the attorneys for the respective parties that the deposition of Charles Cox, one of the defendants, may be taken in behalf of the plaintiff and the garnishees, as an adverse party at the offices of Messrs. Ryan & Pelay, Equitable Building, Portland, Oregon, on Thursday, February 2, 1956, beginning at the hour of 2:00 o'clock p.m., before Roscoe F. Hunt, a Notary Public for Oregon and in shorthand by the said Roscoe F. Hunt.

It was further stipulated and agreed that the deposition, when transcribed, may be used on the trial of the case as by law and Rules of Civil Procedure for the District Courts of the United States

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Deposition of Charles Cox.)

provided, that all questions as to notice of time and place of taking the deposition are waived, that all objections as to the form of the questions are waived unless objected to at the time the questions are asked, and that all objections as to materiality, relevancy, and competency of the testimony are reserved to the parties until the time of the trial.

It was further stipulated and agreed that the reading and signing of the deposition by the witness are waived.) [2]

### CHARLES COX

one of the defendants, was thereupon called for examination on behalf of plaintiff and the garnishees, and after having been duly sworn by the notary was examined and testified as follows, to wit:

#### Direct Examination

By Mr. Bosch:

Mr. Bosch: Mr. Cox, this deposition is taken in connection with a proceeding which is supplemental to the judgment which has been entered in this case of Agnes H. Remillard, administratrix of the estate of Edward S. Remillard, deceased, against Charles Cox and Albert Earl Jones. I represent, as you know, Mrs. Remillard, the judgment creditor. We are concerned today in inquiring into the matter of the trip which the tractor and trailer were on at the time of the accident of December 6, 1954.

Q. Now do you recall what time that tractor

(Deposition of Charles Cox.)

and trailer left Pasco, Washington, on December 6, 1954?

A. Well, I wasn't there at the time but they tell me it left approximately at nine o'clock.

Q. When did you last talk to Mr. Jones, your driver, before the accident?

A. I don't recall when I last talked to him.

Q. Did Mr. Jones before the trip with the tractor and trailer have instructions from you as to making this trip to Portland?

A. Oh, yes. [3]

Q. What instructions did he have in regard to making the trip?

A. To take the truck to the Oregon Truck Sales or to the Buda place in Portland.

Q. Now this truck you refer to, can you tell us the make and year?

A. It was a 1948 Peterbilt.

Q. And this accident which occurred just outside The Dalles on December 6, 1954, involved that truck and trailer, did it not?      A. Yes.

Q. And at the time of the accident the Peterbilt tractor was hauling a home-made trailer?

A. Yes, a pulling trailer.

Q. Now this trailer was it loaded or empty?

A. The trailer was empty.

Q. Can you tell us why your driver had a tractor and trailer on this trip when his intention was to have repairs made only on the tractor in Portland?

A. Well, I might say that the tractor is joined

(Deposition of Charles Cox.)

to the trailer and it stays that way practically all the time. And then there is the possibility that I might have him bring back something from Portland or we might have a load to come back from this part of the country before we got through; and I instructed him, I told him I would come to Portland and I would meet him in Portland at one of these places. [4]

Q. So the arrangement was that Jones was to bring the tractor and trailer to Portland for repairs on the tractor and he was to await your arrival in Portland before returning to Pasco?

A. Yes.

Q. On the day of the accident where were you?

A. On the day of the accident I was in Seattle.

Q. And when did you intend to come to Portland?

A. Tuesday morning.

Q. That would be what date?

A. The morning of the 7th of December.

Q. After the accident did the tractor and the trailer continue on down to Portland?

A. No, they sent it back to Pasco.

Q. And I assume you didn't come to Portland then?

A. No, I went back to Pasco.

Q. Did you have any other business in the Pasco area other than running this hauling business?

A. Well, I have a service station at Pasco.

Q. Do you have a farm in that area?

A. Yes, I have a farm in that area.

Q. Do you run that yourself?

A. Yes.

(Deposition of Charles Cox.)

Q. The farm? A. Yes.

Q. Now will you tell us again what you anticipated doing with [5] your tractor and trailer after you met Mr. Jones here in Portland?

A. What I——

Q. What you expected to do if there had not been an accident?

A. Well, we possibly would send him back to Pasco, or I might have had something for him to take back to Pasco, or it is possible we might have got a load.

Q. When you say you expected he might have hauled something back to Pasco did you think he might haul some of your property back to Pasco?

A. Yes, he might have hauled some of my property back to Pasco, I was thinking about buying a farm tractor.

Q. And that would be for use on your farm in the Pasco area? A. Yes.

Q. Now what kind of repairs did you have to have made on this tractor?

A. The injectors needed cleaning and setting.

Q. Couldn't that work have been done in Pasco?

A. I don't know of anyone there that could do that kind of work in Pasco; it is a sort of a specialized job, and I still don't know anyone in Pasco that can do it.

Mr. Bosch: I think that's all at this time, Mr. Cox.



(Deposition of Charles Cox.)

Further Direct Examination

By Mr. Beebe:

Q. As I understand, in the first place, removing this trailer [6] or disconnecting it involves quite a bit of work, isn't that right?

A. That's right, it involves some work, it is not a major job, you have to jack it up and put timbers under it and so forth and pull the tractor out from under the trailer.

Q. And so that at the time you dispatched Mr. Jones to come down here and have that work done you didn't have anything definite in mind about bringing the tractor and trailer back up there, it might go back empty, or when you got to Portland you might buy your own farm trailer and haul it back, or on the other hand you might get a load to haul back? A. That's right.

Q. As a common carrier? A. Yes.

Q. And as far as that is concerned when the trip started out you didn't know under what circumstances the tractor and trailer would come back?

A. No. But if I had come to Portland I believe I would have bought a farm tractor, I later did buy this farm tractor that I was figuring on before the accident interrupted it.

Q. You believe if you had come down here you would have bought a farm tractor and taken it back?

A. From what I know now I believe I would



(Deposition of Charles Cox.)

have made the deal, but at that moment I wasn't sure I would make the deal, but when I did get to Portland I did make a deal. [7]

Q. But you can't say actually you would have made such a deal?

A. No, I can't say that I actually would have made such a deal, I couldn't say that at that time I would, but I can say looking back I am pretty sure I would have.

Q. So so far as this trip down to Portland is concerned there might have been any one of three things occur, the truck and trailer could dead-head back, or it could take back a farm tractor that you wanted to have hauled out to your farm, or there was a possibility that there was a haul from Longview or some place that you would pick up and have a load going back to Pasco? A. Yes.

Mr. Beebe: That's all.

### Further Direct Examination

By Mr. Ralston:

Q. Mr. Cox, about how much work was involved in taking the trailer off the tractor, jacking it up and so forth, how many hours?

A. A couple of hours.

Q. A couple of hours?

A. Yes, a couple of hours. Then it rides better if it has a weight on it, that is, the boys don't like to ride in the tractor without the trailer, it rides better with the trailer attached.

(Deposition of Charles Cox.)

Q. It would take two hours to disconnect it and a little longer [8] to put it together wouldn't it?

A. Well, approximately so.

Q. And the trailer couldn't have been used while the tractor was in Portland anyway? A. No.

Q. And you felt the simplest thing would be to leave the tractor and trailer attached?

A. I didn't think so much about it, the boys would not be going any place with the tractor that they would have taken the trailer off, no.

Q. And you gave them no instructions one way or the other? A. No, sir.

Mr. Ralston: No further questions.

Mr. Ryan: We have no questions except this that I will ask you: Mr. Cox, you have a right under the federal rules to read this deposition and sign it after you have read it, and you would be permitted to make such changes as you would wish in your testimony. You also have the right to waive that privilege of reading and signing the deposition, and I would advise you that you should waive it if you wish to.

The Witness: All right, what ever you suggest.

Mr. Ryan: All right, say you waive the reading and signing of the deposition.

The Witness: Yes, I waive the reading and signing of the deposition.

(Deposition concluded.)

(Signature waived.)

[Endorsed]: Filed March 2, 1956. [9]

CERTIFICATE OF CLERK

United States of America,  
District of Oregon

I, R. DeMott, clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Allegations of Plaintiff; Answer of Garnishee, Connecticut Fire Insurance Company to Allegations of Plaintiff; Answer of Garnishee, Northwest Casualty Co.; Answer of Northwest Casualty Company to Supplemental Allegations; Supplemental Allegations of Plaintiff; Answer of Garnishee, Connecticut Fire Insurance Company to Allegations of Plaintiff; Reply of Plaintiff to Answers of Garnishee, Connecticut Fire Insurance Co.; Reply of Plaintiff to Answers of Garnishee, Northwest Casualty Company; Agreed Statement of Facts; Objections of Garnishee, Connecticut Fire Insurance Co. to Proposed Findings of Fact, etc.; Proposed Additional and Amended Findings of Fact, etc., of Garnishee, Connecticut Fire Insurance Company (not filed); Objections of Garnishee, Northwest Casualty Co. to Proposed Findings of Fact, etc.; Proposed Additional and Amended Findings of Fact, etc., of Garnishee, Northwest Casualty Company (not filed); Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal of Garnishee, Connecticut Fire Insurance Company; Supersedeas Bond on Appeal; Notice of Appeal of Agnes H. Remillard; Undertaking on Appeal—Costs; Order Approving Supersedeas Bond of Connecticut Fire Insurance Company; Designation of

Record of Connecticut Fire Insurance Company; Statement of Points on Which Appellant Intends to Rely; Order Extending Time to File Notice of Appeal; Notice of Appeal of Northwest Casualty Co.; Supersedeas Bond on Appeal; Additional Designation of Record on Appeal of Northwest Casualty Co.; Statement of Points of Northwest Casualty Company; and Transcript of Docket Entries, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 7891, in which Agnes H. Remillard, Administratrix of the Estate of Edward S. Remillard, Deceased; Connecticut Fire Insurance Company and Northwest Casualty Co. are both appellants and appellees; that the said record has been prepared by me in accordance with the designations of contents of record on appeal filed by the appellants and appellees, and in accordance with the rules of this court.

I further certify that the cost of filing the notices of appeal, \$15 has been paid by the appellants and appellees.

I further certify that the deposition of Charles Cox will be forwarded as soon as the order authorizing its transmittal is filed in this office.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 26th day of June, 1956.

[Seal]

R. DE MOTT,  
Clerk,

By /s/ F. L. BUCK,  
Chief Deputy.

[Endorsed]: No. 15182. United States Court of Appeals for the Ninth Circuit. Connecticut Fire Insurance Company, Appellant, vs. Agnes H. Remillard, Administratrix of the Estate of Edward S. Remillard, Deceased. Agnes H. Remillard, Administratrix of the Estate of Edward S. Remillard, Deceased, Appellant, vs. Connecticut Fire Insurance Company, and Northwest Casualty Co., Appellees. Northwest Casualty Co., Appellant, vs. Agnes H. Remillard, Administratrix of the Estate of Edward S. Remillard, Deceased, Appellee. Transcript of Record. Appeals from the United States District Court for the District of Oregon.

Filed June 27, 1956.

Docketed July 5, 1956.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for  
the Ninth Circuit.



United States Court of Appeals for  
the Ninth Circuit

No. 15182

CONNECTICUT FIRE INSURANCE COM-  
PANY,

Appellant,

vs.

AGNES H. REMILLARD, Administratrix of the  
Estate of Edward S. Remillard, Deceased,

Appellee.

APPELLANT CONNECTICUT FIRE INSUR-  
ANCE COMPANY'S DESIGNATION AND  
ADOPTION OF STATEMENT OF POINTS  
AND DESIGNATION OF RECORD

Comes now appellant Connecticut Fire Insurance Company and designates and adopts as its statement of points upon which it will rely the statement of points appearing in the typewritten record on file herein, and further designates and adopts as its designation of record, the designation of record appearing in the typewritten record on file herein.

/s/ HOWARD K. BEEBE,  
Of Attorneys for Appellant, Connecticut Fire In-  
surance Company.

Service of copy acknowledged.

[Endorsed]: Filed July 6, 1956.



United States Court of Appeals for  
the Ninth Circuit

No. 15182

AGNES H. REMILLARD, Administratrix of the  
Estate of Edward S. Remillard, Deceased,

Appellee,

vs.

CHARLES COX and ALBERT EARL JONES,

Defendants,

CONNECTICUT FIRE INSURANCE COM-  
PANY, Garnishee,

Appellant,

NORTHWEST CASUALTY CO., Garnishee,

Appellant.

STATEMENT OF POINTS AND DESIGNA-  
TION OF RECORD OF THE APPELLANT  
NORTHWEST CASUALTY COMPANY

Comes now the Northwest Casualty Co., one of  
the appellants herein, and adopts as its statement  
of points upon which it intends to rely, the state-  
ment of points filed in the District Court on June  
6th, 1956, and

For its Designation of Record, hereby adopts its

designation of record filed in the District Court on June 6th, 1956.

/s/ WM. C. RALSTON,  
Of Attorneys for Appellant Northwest Casualty  
Company.

Service of copy acknowledged.

[Endorsed]: Filed July 9, 1956.

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[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH AP-  
PELLANT, AGNES H. REMILLARD, AD-  
MINISTRATRIX, INTENDS TO RELY

Comes now Agnes H. Remillard, Administratrix of the estate of Edward S. Remillard, deceased, and files this, her statement of points on which appellant intends to rely on the appeal of this cause, to wit:

I.

The trial court erred in concluding as a matter of law in that portion of its Conclusions of Law as hereinafter underlined, to wit:

“Conclusions of Law

“I.

“That the aforesaid certificates of insurance issued and filed with the Public Utilities Commissioner of the State of Oregon by the garnishees, respectively, are a binding statutory obligation run-

ning in favor of the public and particularly the plaintiff's decedent heerin on account of bodily injuries resulting from the operation of the vehicle referred to on the highway of the State of Oregon, in the maximum sum of Ten Thousand Dollars (\$10,000.00) with the right of equal contribution between them.

“II.

“That the plaintiff is entitled to recover judgment against the garnishees, Connecticut Fire Insurance Company and Northwest Casualty Co., jointly and severally, in the sum of Ten Thousand Dollars (\$10,000.00) together with interest thereon at the rate of six (6) per cent per annum from June 27, 1955, until paid, and the further sum of Three Hundred Fifty Dollars (\$350.00) attorney's fees, and for plaintiff's costs and disbursements of action to be taxed, with the right of equal contribution between them” upon the grounds and for the reason that the trial court made findings of fact that both of the insurance policies issued by the respective garnishees were in force and effect on the date of the accident, each for \$10,000.00, and therefore the trial court should have rendered judgment against each of the garnishees in the sum of \$10,000.00 together with interest, costs and attorneys' fees of \$350.00, but limiting the recovery of plaintiff from the garnishees to the sum of \$10,-427.70 (the amount of the original judgment plus costs) plus interest thereon from June 27, 1955, and costs and attorneys' fees in the instant proceeding, and with the provision that as between the gar-

nishees each should be liable to the other for any amount paid by it to plaintiff in excess of one-half of said judgment of \$10,427.70, plus interest, costs and attorneys' fees.

/s/ FRANK McK. BOSCH,  
Of Attorneys for Agnes H. Remillard, Administra-  
trix of the Estate of Edward S. Remillard,  
Deceased.

Service of copy acknowledged.

[Endorsed]: Filed July 9, 1956.

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[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD ON APPEAL  
BY APPELLANT, AGNES H. REMIL-  
LARD, ADMINISTRATRIX

Agnes H. Remillard, having filed her notice of appeal from the judgment in the above-entitled matter, hereby expressly adopts as her designations of record, the designations of record heretofore made by Connecticut Fire Insurance Company and Northwest Casualty Co. appearing in the type-written record on file herein.

/s/ FRANK McK. BOSCH,  
Of Attorneys for Appellant, Agnes H. Remillard,  
Administratrix of the Estate of Edward S.  
Remillard, Deceased.

Service of copy acknowledged.

[Endorsed]: Filed July 9, 1956.









